IN THE

Supreme Court of the United States
October Term, 1978

No. 78-5283

JAMES A. JACKSON,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA
AND R. ZAHRADNICK, WARDEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF ON BEHALF OF THE RESPONDENT BY THE STATE OF GEORGIA AS AMICUS CURIAE

Respectfully submitted,

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TABLE OF AUTHORITIES

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (A. 30-35) is not reported. The opinion of the United States District Court for the Eastern District of Virginia (A. 25-28) is not reported.

PRELIMINARY STATEMENT

Comes now the State of Georgia, by and through its Attorney General, by invitation of the Respondent, and files its Brief Amicus

Curiae in the above-styled cause on behalf of the Respondent.

QUESTION PRESENTED

Whether on review by federal courts of a State prisoner's conviction by means of his petition for a writ of habeas corpus, it is only necessary that "some evidence" be shown in order to support his conviction or whether the "reasonable doubt" standard is now the applicable standard to determine whether a conviction is properly supported by the evidence?

ARGUMENT

The United States Court of Appeals for the Fourth Circuit found that they were bound by the "some evidence" rule set forth in Thompson v. City of Louisville, 362 U.S. 199 (1960), in determining whether or not there was sufficient evidence in the instant case to support the conviction of the Petitioner. Petitioner seeks to assert that the proper standard by which the evidence supporting Petitioner's conviction should be viewed is that standard set forth in In re: Winship, 297 U.S. 358 (1970), and that this case requires federal courts to make a determination of whether a rational trier of fact could have found the petitioner guilty of first degree murder beyond a reasonable doubt. It is to this issue, as to the proper standard by which federal courts may review the sufficiency of evidence to support a federal habeas corpus petitioner's conviction, that the State of Georgia files its Amicus Curiae brief.

In Fay v. Noia, 372 U.S. 391 (1963), this Court, in tracing the development of the writ of habeas corpus in federal courts, noted the tremendous power of the federal habeas corpus courts. This Court determined that a federal habeas corpus court may grant relief despite a petitioner's failure to have pursued a state remedy available to him at the time he applies for a writ of federal habeas corpus. This power of the federal courts in dealing with habeas corpus petitions must also be viewed in light of the traditional rule that habeas corpus proceedings are governed by equitable principles. Id. at 438. Therefore, the question then becomes what is the appropriate exercise of a federal habeas corpus court's power, viewing habeas corpus as a type of equitable proceeding.

In determining what is an appropriate exercise of a federal district court's power in the area of habeas corpus, considerations such as comity and the orderly administration of justice must not be ignored.

In support of his position that the case of In re: Winship is the standard by which the sufficiency of the evidence must be reviewed by a federal habeas corpus court, Petitioner cites Stone v. Powell, 428 U.S. 465 (1976). Specifically, Petitioner refers to Footnote 31 of that opinion of this Court as strongly suggesting that in a case where innocence is "strongly implicated" the innocence-guilt value should override the policy of state autonomy. The State of Georgia does not read this implication from Footnote 31. The first paragraph of this footnote reads as follows:

> "Resort to habeas corpus, especially for purposes other than to assure that no

innocent person suffers an unconstitutional loss of liberty, results in serious intrusions on values important to our system of government. They include '(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimalization of friction between our federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded. 'Schneckloth v. Bustamonte, 412 U.S., at 259, 36 L.E.2d 854, 93 S.Ct. 2041 (Powell, Jr. concurring). See also Kaufman v. United States, 394 U.S., at 231, 22 L.E.2d 227, 89 S.Ct. 1068 (Black, Jr., dissenting) . . . .' "

In Footnote 31 this Court has recognized the very values which the State of Georgia asserts are in danger of violation should the "reasonable doubt" test of In re: Winship be used to review the sufficiency of the evidence to support state habeas corpus prisoners' convictions.

This Court also stressed the importance of these values enumerated above in Footnote 11 of the decision in Stone v. Powell, supra, by recognizing the equitable nature of the writ of habeas corpus and quoting this Court's previous decision in Francis v. Henderson, 425 U.S. 536 (1976), for the proposition that:

" 'This Court has long recognized that in some circumstances considerations of comity and concerns

for the orderly administration of criminal justice require a federal court to forego the exercise of its habeas corpus power.' "

These principles will be violated if federal habeas corpus is expanded so as to become, in effect, an additional appellate court for reviewing the sufficiency of the evidence to support state court convictions.

Of course, the majority of this Court in Stone v. Powell, supra, specifically delineated an exception to full review by a federal habeas corpus court as to particular categories of constitutional claims. Stone v. Powell serves as an example of an instance in which this Court has determined that certain forms of review would be inappropriate for a federal court to exercise in the habeas corpus area, although these forms of review are totally within their power.

In Francis v. Henderson, 425 U.S. 536 (1976), this Court also recognized the importance of comity, in holding that a state prisoner who fails to make a timely challenge to the composition of the Grand Jury that indicted him may not use the avenue of federal habeas corpus to make such a challenge unless actual prejudice is shown.

The State of Georgia wishes to assert that notions of comity, concerns for the orderly administration of justice, and the necessity of finality in criminal trials are but some of the concerns that compel this Court to limit the review which a federal court should exercise in determining the sufficiency of evidence to support state court convictions. In the State of Georgia, the habeas corpus caseload becomes

increasingly heavier as each year passes. To expand habeas corpus review to include a review of the sufficiency of the evidence to support a conviction under the "reasonable doubt standard," would create almost an intolerable burden for both state habeas corpus courts, as well as for the State Attorney General, in responding to federal habeas corpus petitions by state prisoners.

In effect, the federal habeas corpus court would be making a de novo review of issues which either have been or could have been reviewed by both the trial judge, by means of a motion for new trial, and by the state appellate courts on direct appeal. Some weight should be given by the federal habeas corpus courts to the findings of the trial court and the state appellate courts as to the sufficiency of the evidence to support a habeas corpus petitioner's conviction. An expansion of the "some evidence" standard to the "reasonable doubt" standard would in effect be entirely disregarding the earlier findings of the state courts and provide an entirely new avenue of review. This would completely disregard traditional notions of comity between federal and state governments.

The resulting increase in the number of federal habeas corpus petitions filed by state prisoners is obvious and could potentially create such an onerous burden as to interfere with the orderly administration of criminal justice and the speedy resolution of the claims of habeas corpus petitioners.

The State of Georgia, on behalf of the Respondent, urges that the In re: Winship "reasonable doubt" standard should not be interpreted as to have expanded the applicable

standard of "some evidence" enunciated in Thompson v. City of Louisville. To do so would violate traditional notions of comity and interfere with the orderly administration of justice and the speedy resolution of all federal constitutional claims.

CONCLUSION

For these reasons, Amicus respectfully requests this Court to uphold the holding of the Court of Appeals for the Fourth Circuit in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John C. Walden, a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief on Behalf of the Respondent by the State of Georgia as Amicus Curiae upon the following persons by depositing a copy of same in the United States mail, with proper address and adequate postage to:

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This 7TH day of MARCH, 1979.

JOHN C. WALDEN